IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision Petition No.38 of 2007.
Date of decision: 01.08.2007.

Amar Singh & Another ….**Petitioners**

Versus

Smt.Dehro and Others ….**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioners: **Mr.Romesh Verma, Advocate.**

For the Respondents: **Mr.Vikas Rathore, Advocate.**

Dev Darshan Sud,J.

This revision has been filed by the plaintiffs, who were appellants before the learned District Court at Chamba. The plaintiffs (petitioners herein) were aggrieved by the judgment and order of the learned Civil Judge (Senior Division), Chamba in Civil Suit No.35 of 2003, preferred by the plaintiffs, whereby their suit for permanent prohibitory injunction restraining the respondents herein (defendants before the learned trial Court) from raising any construction on the part of the suit land was dismissed.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

The appeal preferred by the plaintiffs-petitioners was barred by time and an application under Section 5 of the Limitation Act for condonation of delay was moved by them with a prayer that the appeal be disposed of on its merits and the delay in preferring the appeal be condoned in the interest of justice. It was alleged that plaintiff-applicant No.1 had received the certified copy of the judgment on 26.5.2006 when he was ill and was taken to hospital in the month of May, 2006, where he remained under treatment. The applicant alleges that he was being treated by one Dr.Surinder Mohan at Chamba for the ailment of gastritis. It is in these circumstances that the petitioners-plaintiffs had prayed for condonation of delay. The learned Appellate Court, while considering the issue of sufficiency of grounds for condonation of delay, held that no such cause has been made out. The conclusion was arrived at by the learned Court below even without affording an opportunity to the parties to lead evidence.

Although, the delay caused in filing the appeal does vest rights in the opposite side, however, from the facts and circumstances of the present case, I do not find that the delay is of such a nature that the petitioner would not be entitled to the benefit of Section 5 of the Limitation Act. It is by now well settled that a technical approach extinguishing assertion of bonafide rights should not be adopted.

From the record, I find that there is only 20 days delay in preferring the appeal.

In the facts and circumstances of the case, this revision is allowed. The delay in filing the appeal is condoned in the interest of justice subject to the petitioner's paying costs of Rs.4,400/- to the opposite side.

The parties are directed to appear before the learned Appellate Court on ***31st October, 2007***. The costs shall be paid on the first date of appearance, failing which the revision may be deemed to have been dismissed and the order of the Appellate Court would revive with all consequences. The learned District Judge is directed to proceed with the matter and to determine the appeal in accordance with law. This revision petition is accordingly allowed.

August 1, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**